did not operate to revive the original obligation. *International Harvester Co.* v. *Lyman* (1903), — Minn. — 96 N. W. Rep. 87.

The moral obligation to pay a discharged debt is a sufficient consideration for a new promise. *Dusenbury* v. *Hoyt*, 53 N. Y. 521. But where the promise is based upon a condition, it must be shown that the condition has been complied with. *Elwell* v. *Cumner*, 136 Mass. 102; *Bigelow* v. *Norris*, 139 Mass. 12; *Allen* v. *Ferguson*, 18 Wall. 1. In this case the promise contained the condition that payments should be in installments. The refusal to accept such condition prevented revival of the original obligation. For the precedent followed, see *Smith* v. *Stanchfield*, 84 Minn. 343, 87 N. W. 917.

BANKRUPTCY—EXEMPTIONS—DISCHARGE.—By the terms of a promissory note, defendant, the maker, waived all his rights to claim any exemption of homestead, and to plead the same against the note. Plaintiff obtained a judgment on the note, and within four months thereafter defendant filed a voluntary petition in bankruptcy and was adjudged a bankrupt. Subsequent to the discharge in bankruptcy some months later, plaintiff levied an execution issued upon the judgment against the exempt property of defendant. Defendant seeks to set aside the execution levy on the ground that under subsection "f" of section 67 of the bankruptcy law (Act July 1, 1898, c. 541, 30 Stat. 565 [U. S. Comp. St. 1901, p. 3450]), a judgment obtained within four months prior to the adjudication of bankruptcy is void, and claims that the discharge in bankruptcy operates to discharge such judgment lien. *Held*, That a discharge in bankruptcy does not discharge the lien of a judgment obtained, within four months prior to adjudication of bankruptcy, upon a note waiving the homestead exemptions. *McKenney* v. *Cheney* (1903), — Ga. — 45 S. E. Rep. 433.

There is a conflict in authorities as to whether sub-section "f" applies to cases of voluntary bankruptcy. For favorable authority, see *In re Richards*, 95 Fed. 258; *In re Vaughan*, 97 Fed. 560; *In re Hopkins*, 1 Am. Bankr. Rep. 209. Contra. *In re Easley*, 93 Fed. 420; *In re O'Connor*, 95 Fed. 943; *In re De Lue*, 91 Fed. 510. The court holds with the weight of authority that subsection "f" applies to voluntary proceedings, but further holds that it is not applicable to the present case for another reason. Sub-section "f" is applicable only as between the trustee and creditor, being designed to prevent preferences between creditors. Exempt property does not pass to the assignee, and the assignee acquires no title over it. The court of bankruptcy, then, has no jurisdiction over such property, and hence a lien upon it is not affected by bankruptcy proceedings. This case comes within the above reasoning, there being involved a judgment lien on homestead property. For cases sustaining the decision, see, *Robinson* v. *Wilson*, 15 Kan. 595; *Thole* v. *Watson*, 6 Mo. App. 591.

BANKRUPTCY—JUDGMENT IN BASTARDY—DISCHARGE.—The putative father of a natural child was required to pay a monthly stipend for its support, and upon refusal a final money judgment was obtained for the total amount due. Subsequently the debtor was adjudged a bankrupt and was duly discharged. Upon motion to have the judgment satisfied and discharged of record, *Held*, that the debt evidenced by the judgment was not excepted from the operation of the bankruptcy act of 1898, § 17 (Act July 1, 1898, c. 541, 30 Stat. 550, 551 [U. S. Comp. St. 1901, p. 3428]). *McKittrick* v. *Cahoon* (1903), — Minn. — 95, N. W. Rep. 223.

While an original order for the support of an illegitimate child will not be discharged in bankruptcy proceedings, if such an order be reduced to a final

money judgment, it is not within the exceptions of the bankruptcy act of 1898, and will be discharged. See *Fite* v. *Fite*, 61 S. W. 26. The discharge in bankruptcy relied upon in this case was obtained before the amendment of the bankruptcy act in 1903, which added to sub-division 2 of section 17, a provision excepting claims for "debts for alimony due, or to become due, or for maintenance or support of wife or child."

BANKS AND BANKING—TRUST FUNDS—MISAPPROPRIATION—SUBROGATION.—One Vansant, as clerk of the Court of Common Pleas, of Baltimore, deposited state funds in the defendant bank. The bank paid interest on this money to the extent of $3774.70 to the individual account of Vansant. Upon the failure of Vansant to account for and pay over this interest, the state sued his surety. It was held in that action, *Vansant* v. *State*, 96 Md. 110, 53 Atl. 711, that the interest as well as the principal was held in trust for the state, that the failure to account for and pay it over was a breach of trust, and judgment was rendered against the surety. The surety paid the judgment, and brings this action to recover back the amount so paid. *Held*, That the bank was liable. That it had participated in the misappropriation of state funds, and would have been liable to the state in the first instance; therefore, the surety having satisfied the demands of the state, was entitled to be subrogated to its rights against the bank. *American Bonding Co.* v. *Nat. Mechanics Bank* (1903), — Md. — 55 Atl. Rep. 395.

While the weight of authority is probably with the present holding as to the liability of those who participate in the misappropriation of trust funds, MORSE ON BANKS AND BANKING, Art. 317 and cases cited, *Duckett* v. *Mechanics Bank*, 86 Md. 403, 63 Am. St. Rep. 513 and note, 38 Atl. 984, *Shepard* v. *Meridian Nat. Bank*, 149 Ind. 532, 48 N. E. 346, and also as to the surety's right of subrogation, *Bunting* v. *Ricks*, 2 Dev. & Bat. Eq. (N. C.) 130, *Blake* v. *Traders' Nat. Bank*, 145 Mass. 13, 12 N. E. 414, *City of Keokuk* v. *Love*, 31 Iowa 119, 123, yet the case presents an interesting aspect from the fact that the defense interposed was a custom among banks to pay interest on state funds, deposited by clerks of court, to the individual in office, and from the decided holding by the court that such defense was insufficient.

CONTRACTS—AGREEMENT FOR ADVERTISING IN STREET CARS—BREACH WHILE EXECUTORY—MEASURE OF DAMAGES.—Plaintiffs contracted to place in certain street railway cars the advertising of defendant from June 19, 1900 up to and including July 10, 1901. The contract provided that "non-use of space from advertiser's act or omission was the advertiser's loss." Two months and a half after entering into the contract the defendant ordered its cards removed from all cars and considered the contract terminated. The plaintiff however, continued to display the defendant's cards and at the end of the time set in the contract sued for compensation for the whole time, in accordance with the terms of the contract. The lower court gave judgment for the whole amount and defendant appealed. *Held*, that the judgment be reversed. *Ward, et al.* v. *American Health Food Co.* (1903), — Wis. —, 96 N. W. Rep. 388.

The question in this case is as to the nature of the contract, the plaintiff claiming it to be a sub-lease. The court, however, held it to be a contract for personal services only,—hence as to the time after notice of termination was given by the defendant, wholly executory; that therefore the plaintiff could only recover the amount due before this time in this action on the contract, and as to damages must be governed by the rules providing for reducing the loss in case of breach of contract for personal services. The question